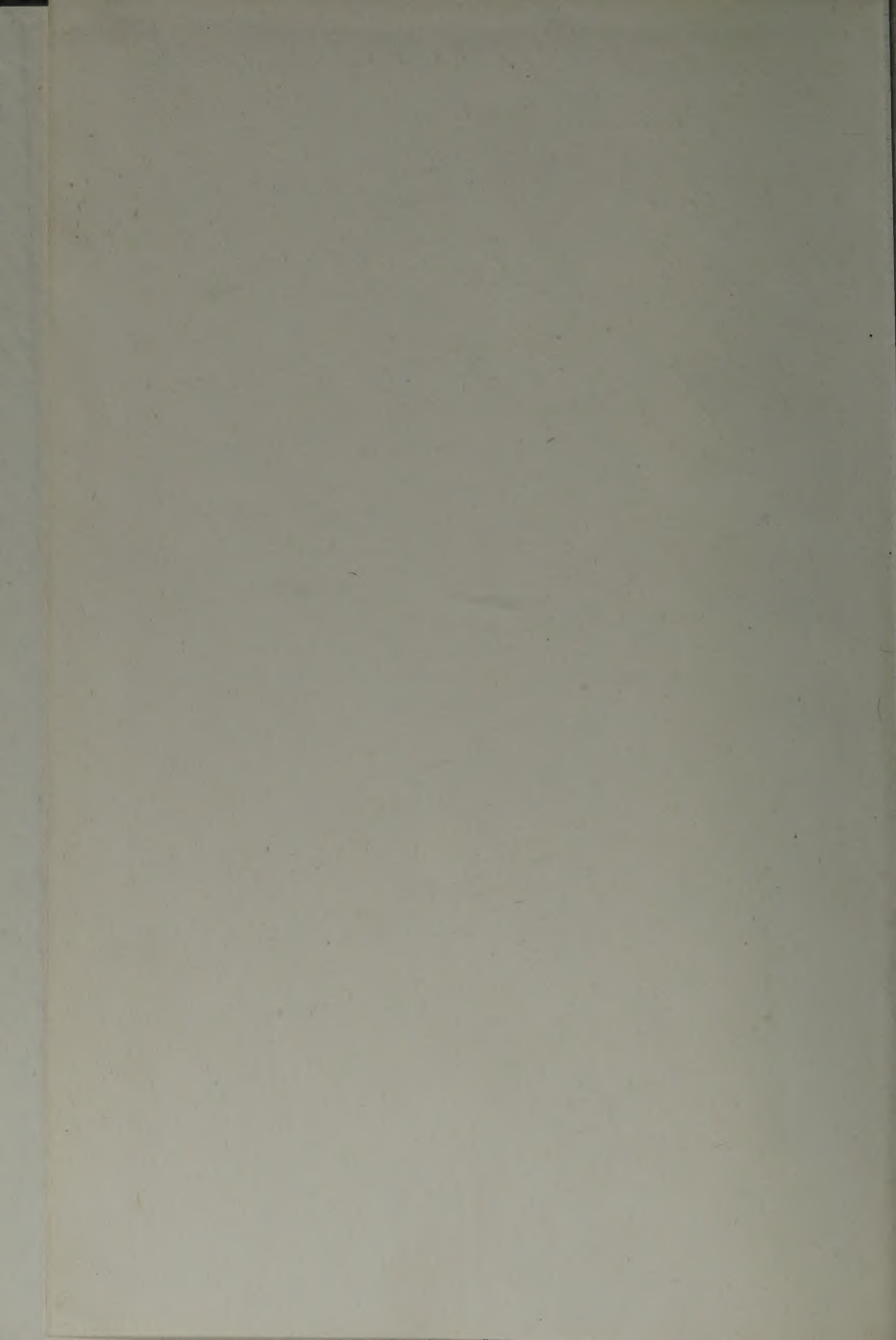


To How Daniel Fish ^{Ms 2657}
from his friend the
author
Joseph Benjamin Bailey
Aug 1978



Abraham Lincoln

As a Criminal Lawyer

AN ADDRESS

BY

JOSEPH BENJAMIN OAKLEAF

At the Banquet of Illinois State's
Attorneys' Association

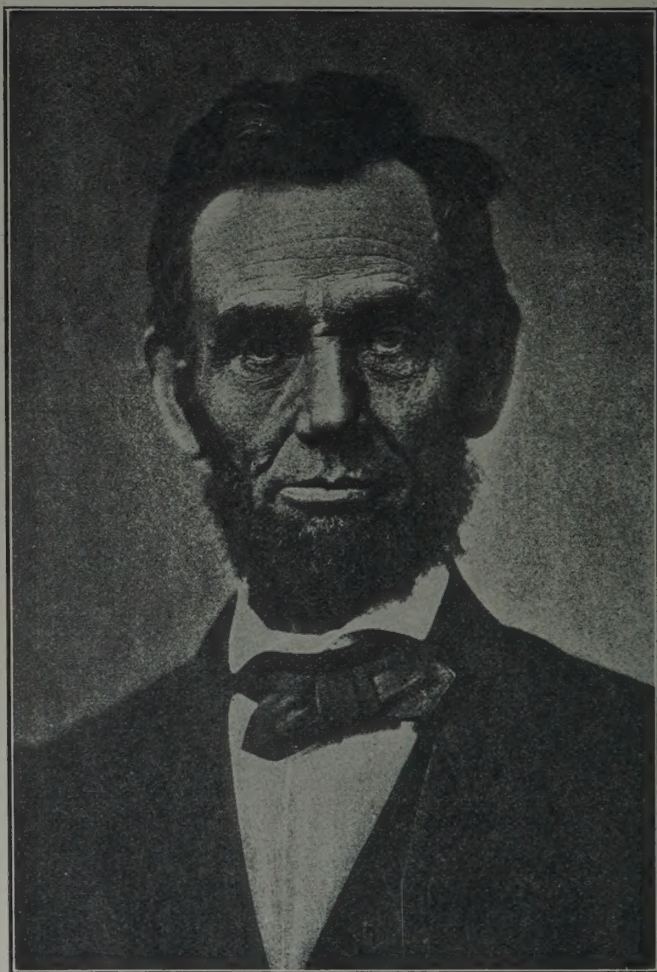
Held at the close of their annual session, December 7th,
1912, at Hotel Sherman, Chicago, Hon. Lawrence M.
Magill of Moline, Illinois, President, Hon. John E. W.
Wayman, Toastmaster.

AUGUSTANA BOOK CONCERN

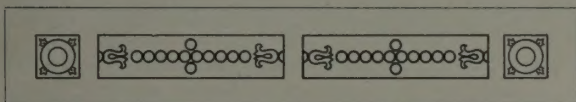
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1923



ABRAHAM LINCOLN



Lincoln as a Criminal Lawyer

The subject assigned me was not of my own selection. I was invited to deliver an address on Lincoln and I was pleased that the honor was accorded me, and, had the subject been left to me, I would have preferred to have addressed you on some other phase of Lincoln's life, inasmuch as there is so little to say concerning Lincoln from the standpoint of a criminal lawyer, for the reason that he abhorred criminal practice.

Should I call upon those present to mention a criminal case in which Lincoln appeared as an attorney I am satisfied the only one which would be mentioned would be the "Armstrong Case", and which is also known as the "Almanac

Case", brought into prominence through Edward Eggleston in his novel "The Graysons," and which, with the exception of some slaves he defended under the fugitive slave act, is the only case mentioned by any of the numerous writers of the life of Lincoln.

If Lincoln appeared in a criminal case at all it was invariably in defending some poor unfortunate who was unable to hire an attorney, and Lincoln, out of the goodness of his great and sympathetic heart, came to the rescue.

At one time he assisted the prosecuting attorney of Schuyler County in a murder case. The man was found guilty and was granted a new trial, but the case was not recalled for trial.

Had Lincoln decided to take up criminal practice he would have been a success. In behalf of the defense he would have been able to present the case in such a light that, if there had been a shadow of a doubt of the client's guilt, the verdict would have been one of not guilty.

We have been prone to consider Lin-

coln as a very indolent lawyer, spending most of his time at the tavern or corner grocery where the idlers of the village would gather at all times of the day or in the evening to gossip. The reason for this, is that many writers in writing about a great man seem to think it is necessary to belittle a man in his early life, in order to make his final career seem more prominent. Anyone who considers that Lincoln was an indolent lawyer will readily dispel such an opinion by looking up his record. He was admitted to the bar in 1836, and was the attorney for the appellant in the Supreme Court in a case decided in his favor at the September Term 1840, reported in 2nd Scammon. The case was begun before a justice of the peace in 1837 and involved a question of practice. The last case in which he appeared as attorney was decided at the January Term, 1861, of the Supreme Court. From the December Term 1840 to the January Term 1861, a period of twenty-one years, he had one hundred and seventy-three cases in the Supreme Court.

In Vol. 27 of the Supreme Court Reports we find twenty-three cases in which he appears.

One reason why I think he would have been a successful criminal lawyer was his mastery of the art of cross examination, in which he had no equal. If any obstinate witness appeared and was determined to conceal facts which Lincoln desired brought out, Lincoln would neither show resentment nor attempt to coerce the witness but would go after him in a nice, friendly way, questioning about things which were foreign to the point desired, thus placing him at ease, making him forget his antagonistic ideas, and, before he was aware of the harm he was doing his side, the whole story would be laid bare, and then Lincoln would compliment the witness on his fairness and the witness would consider himself a hero.

Lincoln had a happy faculty of stripping a case of all unnecessary legal verbiage and presenting only such points as could be best understood by the jury, and such points would be driven home with

simple logic. His sayings were always trite. In the famous "Rock Island Bridge Case", the first bridge to span the Mississippi and which was opposed by the steamboat men from St. Louis to St. Paul, he originated the maxim which has become a law, "A man has just as much right to cross a river as another has to go up and down that river," and which Judge McLean embodied in his opinion. He was able to so frame his questions to a witness that, whichever horn of the dilemma the witness took, the answer would be favorable to Lincoln's side, and, in order to show to you that Lincoln would have made an able criminal lawyer if he had concluded to take up that branch of the practice, we will have to argue from analogy and cull from his actions on the forum as a statesman, as president and commander-in-chief of the armies of the United States. For instance, take the question he submitted to Douglas at the Freeport Debate. It was necessary for Douglas to answer it for the reason that Lincoln had prepared the way by making

the question very prominent. Lincoln knew there were only two answers to give. If Douglas answered one way, Lincoln knew he would offend the Southern people, and if Douglas answered the other way, Lincoln knew he would offend the Northern people. Douglas, after deliberating upon the question, gave an answer such as assured him a seat in the United States Senate, which was then the object in view, but, as Lincoln prophesied, Douglas lost the presidency.

One of the hardest propositions Lincoln had to face, as President, was the Vallandigham affair in Ohio. Vallandigham was a man of great power, a fine orator, a very convincing talker; his face, when in repose, was of angelic sweetness, and when speaking it was all expression; his eyes were magnets which drew all men unto him; but the yellow streak in his make-up was a copper head of unlimited power which framed the sentences uttered by the lips. He was doing the Union cause more harm than the rebel bullets fired by ten regiments of soldiers.

He was arrested and tried by a military court and found guilty and imprisoned. The friends of Vallandigham concluded to bombard Lincoln with such powerful arguments that he would be compelled to order Vallandigham's release. A strong committee was sent to Washington. The committee was composed of a man from each Congressional district of Ohio, and was headed by the celebrated George H. Pendelton. The committee was composed of the brightest men in the State, many of whom had been members of Congress. They presented the matter of Vallandigham's arrest, trial and imprisonment in a set of resolutions which were supported by the best orators of the committee, and a powerful argument was presented. Mr. Lincoln listened to them very attentively, and at the conclusion informed them that he would give the matter serious consideration, and that they would have his reply the next day. The next morning, the President submitted three propositions to the committee, which he desired the committee, or a

majority of them, to write their names upon the back, thus committing them to the propositions; he would then publish the letter containing the propositions and the names, which publication would be within itself a revocation of Vallandigham's sentence and it would leave Vallandigham absolutely unpledged.

These were the propositions:—

1. "That there is now a rebellion in the United States, the object and tendency of which is to destroy the National Union, and that, in your opinion, an army and navy are constitutional means for suppressing that rebellion.
2. That no one of you will do anything which, in his own judgment, will tend to hinder the increase or favor the decrease or lessen the efficiency of the army and navy, while engaged in the effort to suppress that rebellion; and
3. That each of you will, in his sphere, do all he can to have the

officers, soldiers, and seamen of the army and navy, while engaged in the effort to suppress the rebellion, paid, fed, clad, and otherwise well provided for and supported.”

The members of the committee were dumfounded. They knew that the propositions Lincoln submitted to them would go to the world; that if they signed their names to them, it would be a condemnation of Vallandigham's action, and if they refused to sign they would stand before the world condemned as traitors. They went home, made an evasive reply and at the next election Vallandigham was put forward by the Democrats as a candidate for Governor and was defeated by over one hundred thousand majority, and the copper head element in Ohio was routed.

Greeley, who, in his prime, was the greatest editor the country has ever produced, was squelched by the logic of Lincoln. Seward, the ablest man in the Cabinet, found out, to his chagrin, that

he could not overcome the logic of the untutored log cabin man of Illinois. The great Generals in the Army tried to dictate to the Commander-in-chief of the Army, but they all found that instead of informing Lincoln what was art of war, they became students instead. When Lincoln was criticised by General McClellan at one time concerning the plans for a movement of the Army of the Potomac, Lincoln wrote him the following letter:—

“EXECUTIVE MANSION,
WASHINGTON,
FEBRUARY 3, 1862.

Major-General McClellan,

My Dear Sir:—You and I have distinct and different plans for a movement of the Army of the Potomac—yours to be down the Chesapeake, up the Rappahannock to Urbana, and across land to the terminus of the railroad on the York River; mine to move directly to a point on the railroad southwest of Manassas.

If you will give me satisfactory an-

swers to the following questions, I shall gladly yield my plan to yours.

First, Does not your plan involve a greatly larger expenditure of time and money than mine?

Second, Wherein is a victory more certain by your plan than mine?

Third, Wherein is a victory more valuable by your plan than mine?

Fourth, In fact, would it not be less valuable in this, that it would break no great line of the enemy's communications, while mine would?

Fifth, In case of disaster, would not a retreat be more difficult by your plan than mine?

Yours truly,
ABRAHAM LINCOLN."

When taken to task by General Hooker, who had the audacity to write to Lincoln that the country lacked a dictator, Lincoln replied:—"What I now ask of you is military success and I will risk the dictatorship," and again, "If you find Lee coming to the north of the Rappahannock I would by no means cross to the

south of it. In one word, I would not take any risk of being entangled up on the river *like an ox jumped half over the fence, liable to be torn by dogs front and rear, without a fair chance to gore one way or kick the other.*"

Truly Lincoln was a master of men. All of which proves to me conclusively that if Lincoln had specialized in criminal law he would have been a success either in prosecuting or in defending.

From whom did Lincoln receive his knowledge of statesmanship and the art of war? In these branches he seemed inspired. He had an intellect which directed him to take advantage of the schooling of those with whom he associated, and his intellect served him as a fan which blew the chaff away and the grain fell at his feet. He was surely a master of men. Seward, Chase, McClellan, Fremont and hundreds of others fell under the hammer of logic and common sense wielded by him.

During the recent political campaign

there were people who seemed to think that they had a task of overthrowing the great wrong which had not been equalled since the days of Lincoln. They considered their leader a Lincoln and that their leader was enlisted in as great a cause as Lincoln had been, but no leader can be great unless he is big enough to hide behind himself.

We did not see the real Lincoln till the mortal had put on immortality, for when he was reviled he reviled not again but bided his time and returned good for evil. When he had passed from this world to the next, we must say in the words of the immortal Garfield that: "Heaven was brought so close to earth that men could hear the whispering of the angels."

*100 copies printed,
of which this is*

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